

1 DAVID M. FELDMAN (*pro hac vice*)
dfeldman@gibsondunn.com
2 MATTHEW K. KELSEY (*pro hac vice*)
mkelsey@gibsondunn.com
3 GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
4 New York, NY 10166-0193
Telephone: 212.351.4000
5 Facsimile: 212.351.4035

MATTHEW D. MCGILL (*pro hac vice*)
mmcgrill@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Telephone: 202.955.8500
Facsimile: 202.467.0539

6 MICHAEL S. NEUMEISTER, SBN 274220
mneumeister@gibsondunn.com
7 MICHELLE CHOI, SBN 313557
mchoi@gibsondunn.com
8 GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
9 Los Angeles, CA 90071-3197
Telephone: 213.229.7000
10 Facsimile: 213.229.7520

11 *Attorneys for the Ad Hoc Committee of*
12 *Holders of Trade Claims*

13 **UNITED STATES BANKRUPTCY COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 **In re:**
17 **PG&E CORPORATION**

18 **-and-**

19 **PACIFIC GAS AND ELECTRIC**
20 **COMPANY,**

21 **Debtors.**

- 22 ☐ Affects PG&E Corporation
23 ☐ Affects Pacific Gas and Electric
24 Company
25 ☒ Affects both Debtors

26 ** All papers shall be filed in the Lead*
27 *Case, No. 19-30088 (DM).*

Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**OBJECTION OF THE AD HOC
COMMITTEE OF HOLDERS OF TRADE
CLAIMS TO THE PROPOSED
DISCLOSURE STATEMENT FOR
DEBTORS' AND SHAREHOLDER
PROPOSERS' JOINT CHAPTER 11
PLAN OF REORGANIZATION**

1 The Ad Hoc Committee of Holders of Trade Claims (the “Trade Committee”),¹ by and
2 through its undersigned counsel, submits this objection (the “Objection”) to the *[Proposed]*
3 *Disclosure Statement for Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of*
4 *Reorganization* [D.I. 5700] (the “Disclosure Statement”) filed by PG&E Corporation (“PG&E
5 Corp.”), Pacific Gas and Electric Company (the “Utility” and together with PG&E Corp., “PG&E”
6 or the “Debtors”), and certain funds and accounts managed or advised by Abrams Capital
7 Management, LP and certain funds and accounts managed or advised by Knighthood Capital
8 Management, LLP (the “Shareholder Proponents” and, together with the Debtors, the “Plan
9 Proponents”) in respect of the *Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of*
10 *Reorganization Dated January 31, 2020* [D.I. 5590] (the “Plan”)² in these chapter 11 cases (the
11 “Chapter 11 Cases”).

12 The Trade Committee is mindful of, and will abide by, the Court’s admonition that
13 “[o]bjections to a disclosure statement should not include objections to confirmation, alternatives
14 to the proposed Plan or other irrelevant matters,” except for objections “based upon a good faith
15 belief that the proposed Plan is unconfirmable as a matter of law.” *Amended Order Establishing*
16 *Schedule for Disclosure Statement Approval and Plan Confirmation* [D.I. 5732] (the “Scheduling
17 Order”) at 3. Consistent with the Court’s Scheduling Order, on February 28, 2020, the Trade
18 Committee served on the Plan Proponents and other parties with proposed language to be included
19 in the Disclosure Statement. Through the meet-and-confer process, the Disclosure Statement has
20 been satisfactorily modified to make the disclosures requested by the Trade Committee.

21 The Trade Committee has also raised with the Plan Proponents a number of issues with
22 respect to the confirmability of the Plan, none of which have been resolved as part of the meet-
23 and-confer process. With the exception of the issue discussed below, which is “based upon a good
24 faith belief that the proposed Plan is unconfirmable as a matter of law” (Scheduling Order at 3),³

25
26 ¹ The Trade Committee consists of creditors holding more than \$308 million in trade claims against the
27 Debtors. See *First Amended Verified Statement of Ad Hoc Committee of Holders of Trade Claims Pursuant to*
28 *Bankruptcy Rule 2019* [D.I. 5060] (the “First Amended 2019 Statement”). The names and addresses of each Trade
Committee member is listed on the First Amended 2019 Statement.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

³ The Trade Committee acknowledges that, although not included in the Scheduling Order, the Debtors’ notice
of hearing on the Disclosure Statement [D.I. 5733] states that any objection or response to the Disclosure Statement

1 the Trade Committee reserves all rights with respect to any and all issues relating to confirmation
2 of the Plan, whether or not they are expressly referred to in this Objection.

3 **OBJECTION**

4 The Plan currently provides that “[t]he Allowed amount of any [HoldCo/Utility] General
5 Unsecured Claim shall [include/reflect] all interest accrued from the Petition Date *through the*
6 *Effective Date* at the Federal Judgment Rate.” Plan ¶¶ 4.4(a), 4.21(a) (emphasis added). The Plan
7 defines “Allowed” to include “any Claim or Interest arising on or before the Effective Date as to
8 which no objection to allowance has been interposed within the time period set forth in the Plan .
9 . . .” *Id.* ¶ 1.7. The Plan further provides that “any objections to Claims shall be served and filed
10 on or before the later of (i) one-hundred and eighty (180) days after the Effective Date and (ii)
11 such later date as may be fixed by the Bankruptcy Court (as the same may be extended by the
12 Bankruptcy Court for cause shown).” *Id.* ¶ 7.1. A holder of a Claim is only entitled to distributions
13 under the Plan after the Claim has become Allowed. *Id.* ¶ 7.4. In fact, “if any portion of a Claim is
14 a Disputed Claim,” no payment or distribution shall be made on the entire Claim (even any
15 undisputed portion) until the Disputed Claim becomes Allowed. *Id.* ¶ 7.3. Accordingly, while the
16 Plan contemplates payment to holders of Allowed General Unsecured Claims “on the Effective
17 Date or as soon as reasonably practicable thereafter,” the mechanics for allowance of Claims
18 provides the Debtors significant flexibility to delay paying holders of General Unsecured Claims
19 for months and potentially years after the Effective Date. And during such period, under the
20 Debtors’ Plan, holders of General Unsecured Claims would not be entitled to payment of interest
21 to compensate for the delay in distribution. This structure renders the Plan patently unconfirmable.

22 The Plan treats General Unsecured Claims as unimpaired. *Id.* ¶¶ 4.4(b), 4.21(b). The Ninth
23 Circuit has made clear that “any alteration of [a creditor’s] rights constitutes impairment even if
24 the value of the rights is enhanced.” *L & J Anaheim Assocs. v. Kawasaki Leasing Int’l (In re L &*
25 *J Anaheim Assocs.)*, 995 F.2d 940, 942 (9th Cir. 1993) (internal quotation marks and citation
26

27 should be “without points and authorities in support.” *See* D.I. 5733 § 4.c(iii). The Trade Committee has included
28 points and authorities in this Objection only to establish that the Plan is unconfirmable as a matter of law, without
which the Trade Committee is concerned the Court would not have sufficient information to consider this Objection.
See Scheduling Order at 3.

1 omitted). Under the Court’s *Memorandum Decision Regarding Postpetition Interest* [D.I. 5226]
2 (“PPI Memorandum”), the Court found that “[t]he Ninth Circuit [in *Cardelucci*] held that in
3 chapter 11 cases involving solvent debtors, unsecured creditors are entitled to postpetition interest
4 at the federal judgment rate” PPI Memorandum at 6. Accordingly, under the PPI
5 Memorandum and binding Ninth Circuit case law, the Debtors’ Plan, to the extent it continues to
6 unimpaired General Unsecured Claims cannot cut off the right to payment of interest accruing after
7 the Petition Date, either at the Federal Judgment Rate or otherwise.

8 The Ninth Circuit has, in fact, recognized that in order to pay creditors who are not paid in
9 full on a plan’s effective date the present value of their claims, a plan must pay post-effective date
10 interest until such claims are paid in full. *See In re Ambanc La Mesa Ltd. P’ship*, 115 F.3d 650,
11 654 (9th Cir. 1997) (“[I]n order for Liberty to be paid the full value of its claim, the Plan must
12 provide for payment of interest for the post-confirmation time-value of the amount of Liberty’s
13 unsecured claim.”); *In re Perez*, 30 F.3d 1209, 1214 (9th Cir. 1994) (“ . . . Everett and those in his
14 class were entitled to one hundred cents on the dollar. But what does this mean when a class is
15 paid off over time? Is it enough for the class to receive the nominal value of what is owed to it,
16 even though the present value of the payment stream is less than the full amount of the debt?
17 Clearly not. . . . In other words, such creditors must be paid interest for the post-confirmation time
18 value of their money.”). These cases apply Bankruptcy Code section 1129(b), but it would be
19 inconsistent with the Ninth Circuit’s holding in *L & J Anaheim* to require post-effective date
20 interest for impaired creditors under section 1129(b), but not require the same result under
21 Bankruptcy Code section 1124.

22 Indeed, debtors routinely propose plans that ensure that creditors are compensated for any
23 delay in distributions on their claims by way of post-effective date interest. *See, e.g., In re Calpine*
24 *Corp.*, Ch. 11 Case No. 05-60200 (BRL) (Bankr. S.D.N.Y.), Docket No. 7237 ¶¶ I.A.155; III.B.1–
25 7, 9, 11–13, 16–17 (paying interest on allowed claims through the “Interest Accrual Limitation
26 Date,” defined as “[t]he date on which the applicable Claim is satisfied in full”); *In re Dow*
27 *Silicones Corp.*, Ch. 11 Case No. 95-20512 (DPH) (Bankr. E.D. Mich.), Docket No. 30115
28 (approving settlement agreement pursuant to which the parties agreed that “interest on any

1 unsatisfied portion of an Allowed Class 4 Claim . . . that was due and owing on the Plan Effective
2 Date accrues from the Plan Effective Date until the date distribution is actually made”).

3 In the event holders of General Unsecured Claims are not paid the full amount of their
4 Allowed Claims, plus appropriate postpetition interest, on the Effective Date, then any such
5 amount not paid must accrue post-Effective Date interest. To the extent the Plan does not provide
6 for such post-Effective Date interest on the amount of postpetition interest disputed as of the
7 Effective Date, the Plan is patently unconfirmable and approval of the Disclosure Statement must
8 be denied.

9 **RESERVATION OF RIGHTS**

10 As noted above, the Trade Committee reserves all of its rights to object to confirmation of
11 the Plan, whether or not the bases for such objection are expressly referred to in this Objection.
12 Further, the Trade Committee reserves the right to join in any argument or objection made by any
13 other parties relating to the adequacy of the Disclosure Statement and confirmability of the Plan.

14 **CONCLUSION**

15 For the foregoing reasons, the Trade Committee requests that the Court sustain this
16 Objection, deny approval of the Disclosure Statement, and grant such other and further relief as
17 the Court deems just and proper.

18
19 Dated: March 6, 2020

GIBSON, DUNN & CRUTCHER LLP

20
21 By: /s/ Michael S. Neumeister
22 David M. Feldman (*pro hac vice*)
23 Matthew K. Kelsey (*pro hac vice*)
24 Matthew D. McGill (*pro hac vice*)
Michael S. Neumeister
Michelle Choi

25 *Attorneys for the Ad Hoc Committee of*
26 *Holders of Trade Claims*
27
28